

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3811 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ANANDVALLY P MENON

Versus

STATE OF GUJARAT

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Appearance:

MR PV HATHI for Petitioner

MS SIDDHI TALATI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/97

ORAL JUDGMENT

#. Heard learned counsel for the parties.

#. It is not in dispute that the petitioner was given appointment in the office of respondent No.3 as Stenographer on condition that her services shall come to an end on availability of selected candidate from GPSC. Further facts which are not in dispute are that on

16.2.83, GPSC issued an advertisement for direct appointment on the post of English Stenographer Grade I & II, but in the examination the petitioner failed. Earlier to this petition, the petitioner, having apprehension of termination of her services filed Special Civil Application No.20 of 1982 before this Court and that petition was withdrawn by petitioner on 9th February 1982. The learned counsel for the respondent in Sp.C.A. 20 of 1982, made a statement before this Court that till GPSC recommends another candidate, she will be continued till the GPSC decides the question of requisition by the State Government for this post. On this statement, that petition has been withdrawn by petitioner and she has also filed an undertaking that if a candidate approved and selected by GPSC is appointed on the post which she holds, and if she is not selected on the said post, she shall vacate her post and in such eventuality she shall not dispute the right of the authorities to appoint the said person to the said post. So, after the petitioner's rejection by GPSC as well as after the availability of selected candidate, the petitioner had no right to continue on the post. After she failed in GPSC examination, contrary to what she has undertaken before this Court, the petitioner filed the present Special Civil Application and prayer has been made for regularization of her services. Filing of this Special Civil Application by petitioner before this Court is nothing but abuse of the process of the Court. Once the petitioner has undertaken to vacate the post on her failure in the GPSC examination and on availability of selected candidate, how she can justify her claim for regularization on this post. This conduct of petitioner is itself sufficient for dismissal of this Special Civil Application.

#. However, during the pendency of this Special Civil Application, the petitioner's services came to be terminated on 17.4.86 on availability of selected candidate and no exception can be taken to this order. The petitioner has not acquired any right to continue on the post. The post is to be filled in only after selection by GPSC and when the petitioner has failed in the examination held by GPSC for the said post, she could not have been allowed to continue, moreso when the selected candidates were available. The petitioner was given conditional appointment and she has also given undertaking. In view of this fact, none of the legal or fundamental rights of the petitioner are infringed.

#. Otherwise also, the petitioner's appointment was only a temporary appointment and even if she has worked on the

said post for a long period, she does not acquire any right to hold the post. It is well settled that a temporary government servant does not become permanent unless he or she acquires that capacity by force of any rule or is declared permanent servant. The learned counsel for the petitioner otherwise also failed to show any provision or rule framed under Article 309 of the Constitution of India or any administrative resolution which confer any such right on the petitioner of regularization on the post of Stenographer. In view of the aforesaid position, the petitioner has no case.

#. In the result, this Specail Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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